

APPEAL NO. 040557
FILED APRIL 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 18, 2004. The hearing officer resolved the disputed issues by deciding that the appellant (claimant) was injured in the course and scope of his employment on _____; that he did not give timely notice of the injury to his employer and did not have good cause for his failure to do so; that as a consequence of the claimant's failure to give timely notice of the injury to his employer, the claimant did not sustain a compensable injury and did not have disability. The claimant appeals the hearing officer's decision and attaches new evidence to his request for review, some of which was not offered into evidence at the hearing. The respondent (self-insured) contends that the claimant's request for review does not meet the minimum requirements for an appeal under Section 410.202(c). Alternatively, the carrier urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Section 410.202(c) provides as follows:

A request for appeal or a response must clearly and concisely rebut or support the decision of the hearing officer on each issue on which review is sought.

We have held that no particular form of appeal is required and that an appeal, even though terse and unartfully worded, will be considered. Texas Workers' Compensation Commission Appeal No. 91131, decided February 12, 1992; Texas Workers' Compensation Commission Appeal No. 93040, decided March 1, 1993, and cases cited therein. We have also held that appeals lacking specificity will be treated as attacks on the sufficiency of the evidence. Texas Workers' Compensation Commission Appeal No. 92081, decided April 14, 1992. In the present case, the claimant specifies the determinations that he is appealing and identifies the facts that he believes support his position. Therefore, the claimant's appeal is adequate to invoke our jurisdiction.

The claimant attached new evidence to his appeal, some of which was not offered into evidence at the hearing. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result. The

evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

Section 409.001 requires that an employee, or a person acting on the employee's behalf, shall notify the employer of an injury not later than the 30th day after the date on which the injury occurs. Failure to do so, absent a showing of good cause or actual knowledge of the injury by the employer, relieves the carrier and employer of liability for the payment of benefits for the injury. Section 409.002. Whether timely notice was given and, if not, whether the claimant had good cause for failing to give timely notice, was a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's timely notice determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986). Having affirmed the determination that the claimant failed to comply with the requirements of Section 409.001, we similarly affirm the determinations that the claimant did not sustain a compensable injury and did not have disability.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **(a self-insured governmental entity)** and the name and address of its registered agent for service of process is

**SUPERINTENDENT
(ADDRESS)
(CITY), TEXAS (ZIP CODE).**

Chris Cowan
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Robert W. Potts
Appeals Judge